

The Honorable James L. Robart

KATHRYN KENEALLY  
Assistant Attorney General

NATHANIEL B. PARKER  
Trial Attorney, Tax Division  
United States Department of Justice  
P.O. Box 683, Ben Franklin Station  
Washington, DC 20044-0683  
Telephone: (202) 307-6547  
Facsimile: (202) 307-0054  
Email: [nathaniel.b.parker@usdoj.gov](mailto:nathaniel.b.parker@usdoj.gov)

JENNY A. DURKAN  
United States Attorney  
*Of Counsel*

UNITED STATES DISTRICT COURT

**WESTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA.

**Plaintiff,**

v.

DAVID G. PFLUM; PILOT ENTERPRISE,  
LLC; PATRICIA A. PFLUM; SAN JUAN  
COUNTY; COUNTRYWIDE HOME LOANS

### Defendants.

Case No. 2:12-cv-01632-JLR

**STIPULATED MOTION TO AMEND  
ORDER OF SALE**

Noting Date: 6/24/2013

The United States of America and Bank of America, N.A. (“BANA”), FKA Countrywide Home Loans, by and through undersigned counsel, move to amend the Order of Sale, Docket #30 to correct a clerical error.

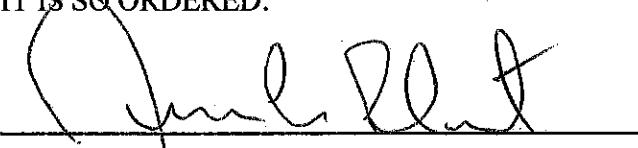
With its Motion for Default Judgment, the United States submitted a proposed order of sale. Pursuant to a stipulation entered between the United States and Bank of America, the United States acknowledged Bank of America's prior interest in 500 MacDonald Street, Friday Harbor, WA ("Parcel A"). See Docket at #20, ¶¶ 1, 3. However, in the proposed order of sale, undersigned counsel for the United States

## **Stipulated Motion**

**U.S. Department of Justice  
Tax Division, Western Region  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 307-6547**

1 inadvertently listed Bank of America's stipulated interest in Parcel A in the distribution schedule relating  
2 to Parcel B. See Docket at #30, ¶¶ 11, 12. Consequently, the parties respectfully request that paragraph  
3 11 of the Order of Sale be amended to include Bank of America's third-priority interest in the proceeds  
4 arising from the sale of Parcel A and paragraph 12 of the Order of Sale be amended to remove Bank of  
5 America from the distribution schedule relating to Parcel B. The relief requested herein does not affect  
6 the priority of or proceeds payable to San Juan County.

7 For the reasons set forth above, and based upon the record in this case, the United States and Bank of  
8 America request that the Court enter the Proposed Amended Order of Sale submitted herewith.

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10 Dated this 24 day of June, 2013.  
11 IT IS SO ORDERED.  
12   
13  
14 UNITED STATES DISTRICT COURT JUDGE

15  
16 Respectfully submitted this 24th day of June, 2013.

17 KATHRYN KENEALLY  
18 Assistant Attorney General

20 /s/ Nathaniel B. Parker  
21 NATHANIEL PARKER  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 683  
Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 307-6547  
Fax: (202) 307-0054  
*Attorneys for the United States*

26 JENNY DURKAN  
United States Attorney- WD Wash.  
*Of Counsel*

28 Stipulated Motion

*/s/ authorized via electronic mail*  
PHILIP R. MEADE  
ROSSI F. MADDALENA  
Merrick Hofstedt & Lindsey  
3101 Western Ave., Ste 200  
Seattle, WA 98121  
*Attorney for BANA*

U.S. Department of Justice  
Tax Division, Western Region  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 307-6547

1 Certificate of Service

2

3 The undersigned hereby certifies that he effected the mailing of the foregoing via U.S. Mail, first class,  
4 postage prepaid, on June 24, 2013 to the following:

5 David G. Pflum  
6 110 W. Bertrand  
7 St. Marys, KS 66536

8 Patricia Pflum  
9 110 W. Bertrand  
St. Marys, KS 66536

10 Randall K. Gaylord  
11 San Juan County Prosecuting Atty's Office  
PO Box 760  
Friday Harbor, WA 98250  
*Attorney for San Juan County*

12 Philip Randolph Meade  
13 Merrick Hofstedt & Lindsey  
14 3101 Western Ave., Ste 200  
Seattle, WA 98121  
*Attorneys for Countrywide Home Loans*

16 /s/ Nathaniel B. Parker  
17 NATHANIEL B. PARKER  
18 Trial Attorney, US Dept. of Justice, Tax Div.

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1  
2 KATHRYN KENEALLY  
3 Assistant Attorney General

4 NATHANIEL B. PARKER  
5 Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 683  
6 Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 307-6547  
7 Facsimile: (202) 307-0054  
Email: [Nathaniel.B.Parker@usdoj.gov](mailto:Nathaniel.B.Parker@usdoj.gov)  
[Western.Taxcivil@usdoj.gov](mailto:Western.Taxcivil@usdoj.gov)  
8  
9 Attorneys for the United States

10 JENNY DURKAN  
U.S. Attorney- WD WASH  
11 Of Counsel

12 UNITED STATES DISTRICT COURT  
13 WESTERN DISTRICT OF WASHINGTON  
14 UNITED STATES OF AMERICA, }  
15 Plaintiff, }  
16 v. }  
17 DAVID G. PFLUM; PILOT ENTERPRISE, }  
LLC; PATRICIA A. PFLUM; SAN JUAN }  
COUNTY; COUNTRYWIDE HOME LOANS }  
18 Defendants. }  
19

Case No. 2:12-cv-1632-JLR

**PROPOSED AMENDED ORDER OF  
SALE**

20 This Order of Foreclosure and Judicial Sale is entered pursuant to the provisions of 28 U.S.C. §§  
21 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403. The Court hereby orders as follows:

22 1. The parcels of real property upon which foreclosure was sought are a tracts of real property  
23 (hereinafter "Subject Properties") are:

24 A. Parcel A, located at 500 MacDonald Street, Friday Harbor, WA 98250 and described as  
25 follows:

26 Lot 14-2, SHORT PLAT OF FRIDAY HARBOR VIEW, according to the Plat thereof,  
27 recorded in Volume 7 of Plats, Pages 31 and 31A, records of San Juan County. Situate in  
San Juan County, Washington.

28 B. Parcel B, located at 566 University Road, Friday Harbor, WA 98250 and described as

1 follows:

2  
3 Lot 1, MARBLE ADDITION TO FRIDAY HARBOR, according to the Plat thereof,  
4 recorded in Volume 1 of Plats, at page 91, in the office of the Auditor of San Juan County,  
5 Washington. Situate in San Juan County, Washington.

6 C. Parcel C, located at Tucker Ave, Friday Harbor, WA 98250, and more particularly described  
7 as follows:

8 Lot 1, KARL'S SHORT PLAT, a private subdivision in the Town of Friday Harbor,  
9 according to the Short Plat recorded at Volume 5 of Short Plats, page 12, records of San  
10 Juan County, Washington and a portion of Lot 2 of said Short Plat, described as follows:  
11 Beginning at the Northerly corner common to said Lot 1 and Lot 2 as shown on the said  
12 Short Plat; thence along the Northerly boundary of said Lot 2, South 89° 22' 45" East,  
13 11.12 feet; thence leaving said Northerly boundary and running parallel with the boundary  
14 common to said Lot 1 and Lot 2, South 0° 20' 01" West, 54.00 feet, thence parallel with  
15 said Northerly boundary North 89° 22' 45" West, 11.12 feet to a point on said common  
16 boundary; thence along said common boundary North 0° 20' 01" East, 54.00 feet to the  
17 point of beginning.

18 EXCEPTING THEREFROM all that portion of said Lot 1 described as follows:

19 Commencing at the Northerly corner common to said Lot 1 and Lot 2; thence along the  
20 common boundary of said Lot 1 and Lot 2, South 0° 20' 01" West, 54.00 feet to the TRUE  
21 POINT OF BEGINNING of the parcel to be described; thence continuing along said  
22 common boundary South 54.69 feet to the Southerly corner common to said Lot 1 and Lot  
23 2, thence leaving said common boundary and running along the Southerly boundary of  
24 said Lot 1, South 84° 43' 32" West, 11.67 feet; thence South 84° 31' 36" West, 30.39 feet;  
25 thence South 75° 16' 57" West, 63.04 feet; thence South 70° 56' 28" West, 25.60 feet to a  
26 point on the Easterly margin of Tucker Ave as shown on said Short Plat, thence leaving  
27 said Southerly boundary and running along said Easterly margin, the same being the  
28 Westerly boundary of said Lot 1, North 0° 18' 39" East, 25.00 feet; thence leaving said  
margin and said Westerly boundary North 55° 53' 31" East, 104.29 feet; thence South 89°  
22' 45" East, 40.88 feet to the True Point of Beginning.

Situate in San Juan County, Washington.

2 The Court held that the United States holds valid federal tax liens arising from Mr. Pflum's  
3 income tax liabilities for the 1997 through 2007 tax years and an employment tax liability for the  
4 period ending December 31, 1999 on the Subject Properties.

5 The United States' federal tax liens against the Subject Properties are hereby foreclosed. The  
6 United States Marshal for the Western District of Washington, his/her representative, or an  
7 Internal Revenue Service Property Appraisal and Liquidation Specialist ("PALS") representative  
8 is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell  
9 the Subject Properties, free and clear of the right, title and interest of all parties to this action and

any successors in interest or transferees of those parties. The United States may choose either the United States Marshal or a PALS representative to carry out the sales under this Order of Foreclosure and Judicial Sale and shall make the arrangements for the as set forth in this Order. This Order of Foreclosure and Judicial Sale shall act as a special writ of execution and no further orders or process from the Court shall be required.

4. The United States Marshal for the Western District of Washington, his/her representative, or a PALS representative is authorized to have free access to the Subject Properties and to take all actions necessary to preserve them including, without limitation, retaining a locksmith or other person to change or install locks or other security devices on any parts thereof, until a deed thereto is delivered to the ultimate purchaser.

5. The terms and conditions of the sales of the Subject Properties are as follows:

- a. Except as otherwise stated herein, the sales of the Subject Properties shall be by public auction to the highest bidder, free and clear of all liens and interests.
- b. The sales shall be subject to all laws, ordinances, and governmental regulations (including building and zoning ordinances), affecting the premises, and easements and restrictions of record, if any.
- c. Each sale shall be held at the courthouse of the county or city in which the subject property being sold is located, on the premises of the property being sold, or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and time announced by the United States Marshal, his/her representative, or a PALS representative.
- d. Notice of the sale of a subject property shall be published once a week for at least four consecutive weeks before the date fixed for the sale in at least one newspaper regularly issued and of general circulation in San Juan County, Washington, and, at the discretion of the Marshal, his/her representative, or a PALS representative, by any other notice that it or its representative may deem appropriate. **State law notice requirements for foreclosures or execution sales do not apply to these sales under**

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2       **federal law.** The notices of sale shall describe the subject property being sold and  
3       contain the material terms and conditions of sale contained in this Order of  
4       Foreclosure and Judicial Sale.

5       e. The minimum bid for each sale will be set by the Internal Revenue Service. If the  
6       minimum bid for the sale is not met or exceeded, the Marshal, his or her  
7       representative, or a PALS representative may, without further permission of this  
8       Court, and under the terms and conditions in this Order of Foreclosure and Judicial  
9       Sale, hold a new public sale, if necessary, and reduce the minimum bid or sell to the  
10      highest bidder;

11      f. Bidders shall be required to DEPOSIT at the time of the sale with the Marshal, his/her  
12      representative, or a PALS representative, a minimum of ten percent of the bid with the  
13      deposit to be made by a certified or cashier's check payable to the United States  
14      District Court for the Western District of Washington. Before being permitted to bid  
15      at the sale, bidders shall display to the Marshal, his/her representative, or a PALS  
16      representative satisfactory proof of compliance with this requirement.

17      g. The balance of the purchase price of each property in excess of the deposit tendered  
18      shall be paid to the Marshal or a PALS representative (whichever person is  
19      conducting the sale) within twenty (20) days after the date the bid is accepted by a  
20      certified or cashier's check payable to the United States District Court for the Western  
21      District of Washington. If the successful bidder fails to fulfill this requirement, the  
22      deposit shall be forfeited and shall be applied to cover the expenses of the sale,  
23      including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to  
24      be applied to the federal tax liabilities of David Pflum. The subject property may be  
25      offered to the next highest bidder or may be again offered for sale under the terms and  
26      conditions of this Order of Foreclosure and Judicial Sale. The United States may bid  
27      as a creditor against its judgment without tender of cash.

28      h. The sales of each subject property shall not be final until confirmed by this Court.

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2           The Marshal or a PALS representative shall file a report of the sale with the Court,  
3           together with a proposed order of confirmation of sale, within 30 days from the date of  
4           receipt of the balance of the purchase price.

5           i. Upon confirmation of the sale, the Marshal or PALS representative shall execute and  
6           deliver a deed of judicial sale conveying the subject property sold to the purchaser.  
7           j. Upon confirmation of the sale, the interests of, liens against, or claims to the subject  
8           property held or asserted by the United States and any other parties to this action or  
9           any successors in interest or transferees of those parties shall be discharged and  
10           extinguished. The sales are ordered pursuant to 28 U.S.C. § 2001. **Redemption**  
11           rights under state law shall not apply to these sales under federal law.  
12           k. After confirmation of the sale, the Office of the Clerk, San Juan County, shall cause  
13           transfer of the subject property to be reflected upon that city's register of title.  
14         6. Until the Subject Properties are sold, Mr. Pflum shall each take all reasonable steps necessary to  
15           preserve the Subject Properties (including all buildings, improvements, fixtures and  
16           appurtenances thereon) including, without limitation, maintaining fire and casualty insurance  
17           policies on the Subject Properties. He shall not commit waste against the Subject Properties, nor  
18           shall he cause or permit anyone else to do so. He shall not do anything that tends to reduce the  
19           value or marketability of the Subject Properties, nor shall he cause or permit anyone else to do so.  
20           He shall not record any instruments, publish any notice, or take any other action that may directly  
21           or indirectly tend to adversely affect the value of the Subject Properties or that may tend to deter  
22           or discourage potential bidders from participating in the public sale, nor shall he cause or permit  
23           anyone else to do so. **Violation of this paragraph shall be deemed a contempt of court and**  
24           **punishable as such.**  
25         7. All persons occupying any of the Subject Properties shall leave and vacate permanently such  
26           property no later than 30 days after entry of this Order, each taking with them his or her personal  
27           property (but leaving all improvements, buildings, fixtures, and appurtenances) when leaving and  
28           vacating. If any person fails or refuses to leave and vacate the subject properties by the time

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2 specified in this Order, the United States Marshal's Office or the Sheriff of San Juan County is  
3 authorized to take whatever action they deem appropriate to remove such person or persons from  
4 the premises, whether or not the sale of such property is being conducted by a PALS  
5 representative. If any person fails or refuses to remove his or her personal property from the  
6 Subject Properties by the time specified herein, the personal property remaining on any of the  
7 Subject Properties thereafter is deemed forfeited and abandoned, and the United States Marshal's  
8 Office or the PALS representative is authorized and directed to remove and dispose of it in any  
9 manner they see fit, including sale, in which case the proceeds of sale are to be applied first to the  
10 expenses of sale, and then to the tax liabilities at issue herein.

11 8. Notwithstanding the terms of the immediately preceding paragraph, if, after the sale of a Subject  
12 Property is confirmed by this Court, the property remains occupied, a writ of assistance may,  
13 without further notice, be issued by the Clerk of Court pursuant to Rule 70 of the Federal Rules of  
14 Civil Procedure to compel delivery of possession of the Subject Property to the purchasers  
15 thereof.  
16 9. If Mr. Pfleum, or any other persons occupying a Subject Property, vacates the Subject Property  
17 prior to the deadline set forth in paragraph 8, above, such person shall notify counsel for the  
18 United States no later than 2 business days prior to the date on which he or she is vacating the  
19 property. Notification shall be made by leaving a message for said counsel, Nathaniel B. Parker,  
20 at (202) 307-6547, or by electronic mail directed to nathaniel.b.parker@usdoj.gov.  
21 10. The Marshal, his or her representative, or a PALS representative, shall deposit the amount paid  
22 by the purchaser of each subject property into the registry of the court. Upon appropriate motion  
23 for disbursement or stipulation of the parties, the court will disburse the funds arising from the  
24 sale of each Subject Property in the following partial order of preference until these expenses and  
25 liens are satisfied:  
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2 11. Partial order of preference of proceeds arising from the sale of Parcel A:  
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PRIORITY	PAYEE	AMOUNT
First	Internal Revenue Service	In the amount of allowed costs and expenses of sale, including any commissions due under 28 U.S.C. § 1921(c) and including an amount sufficient to cover the costs of any steps taken to secure or maintain the subject property pending sale and confirmation by the Court
Second	San Juan County	In the amount of any and all outstanding property taxes encumbering Parcel A as set forth in the Parties' stipulation, Docket #17.
Third	Bank of America	In the amount secured by the Deed of Trust encumbering Parcel A at San Juan County Recording Number 20030724028, and assigned , as set forth in the document recorded at Recording Number 20110627019, as set forth in the Parties' stipulation, Docket #20.
Fourth	United States	To the remainder of the proceeds, not to exceed the amount of the outstanding federal tax liabilities of Mr. Pflum and accrued interest and penalties.

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2 12. Partial order of preference of proceeds arising from the sale of Parcel B:  
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PRIORITY	PAYEE	AMOUNT
First	Internal Revenue Service	In the amount of allowed costs and expenses of sale, including any commissions due under 28 U.S.C. § 1921(c) and including an amount sufficient to cover the costs of any steps taken to secure or maintain the subject property pending sale and confirmation by the Court
Second	San Juan County	In the amount of any and all outstanding property taxes encumbering Parcel B as set forth in the Parties' stipulation, Docket #17.
Third	United States	To the remainder of the proceeds, not to exceed the amount of the outstanding federal tax liabilities of Mr. Pflum and accrued interest and penalties.

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2 13. Partial order of preference of proceeds arising from the sale of Parcel C:  
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PRIORITY	PAYEE	AMOUNT
First	Internal Revenue Service	In the amount of allowed costs and expenses of sale, including any commissions due under 28 U.S.C. § 1921(c) and including an amount sufficient to cover the costs of any steps taken to secure or maintain the subject property pending sale and confirmation by the Court
Second	San Juan County	In the amount of any and all outstanding property taxes encumbering Parcel C as set forth in the Parties' stipulation, Docket #17.
Third	United States	To the remainder of the proceeds, not to exceed the amount of the outstanding federal tax liabilities of Mr. Pflum and accrued interest and penalties.

17 DATED this 24<sup>th</sup> day of June, 2013.  
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19  
20 UNITED STATES DISTRICT COURT JUDGE  
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22 Presented by:

23 KATHRYN KENEALLY  
Assistant Attorney General

24  
25 /s/ Nathaniel B. Parker  
NATHANIEL B. PARKER  
26 Trial Attorney, Tax Division  
U.S. Department of Justice

27 Of Counsel:  
28 JENNY DURKAN  
United States Attorney, WD Wash.